

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANTE MARTEZ SADDLER,

Defendant-Appellant.

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UNPUBLISHED

October 20, 2005

No. 257029

Wayne Circuit Court

LC No. 04-002620-01

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to two years' imprisonment on the felony-firearm conviction and one to fifteen years' imprisonment for the possession with intent to deliver marijuana conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that insufficient evidence existed to sustain his felony-firearm conviction. Defendant contends that the trial court misinterpreted the law, and thus, he was convicted only on a showing of proximity and accessibility to the firearm without a showing of the intent to exercise dominion and control over the firearm. Defendant asserts that the prosecution did not establish possession. We disagree.

We review a challenge to the sufficiency of the evidence in a bench trial de novo. *People v Herman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). In reviewing sufficiency of the evidence, we must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that all the elements of the offense were proven beyond a reasonable doubt. *People v Bulls*, 262 Mich App 618, 623; 687 NW2d 159 (2004). This Court is to draw all reasonable inferences and make credibility choices in support of the trier of fact's verdict. *Id.* at 623-24; see also *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

In a criminal case, a prosecutor must introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999); *People v Tombs*, 260 Mich App 201, 206-207; 679 NW2d 77 (2003). This standard must be shown for all essential elements of the crime. See

*People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66, 70 (2004). However, assessing the credibility of testimony is a matter for the trier of fact to decide. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

Felony-firearm, MCL 750.227b, is the possession of a firearm during the commission of a felony. All that is necessary to establish felony-firearm is that defendant possessed a firearm while he committed, or attempted to commit, a felony. *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003). Two elements must be shown to prove felony-firearm. First, defendant must have possessed a firearm. Second, this possession must occur at the time of an underlying felony. *People v Burgenmeyer*, 461 Mich 431, 436; 606 NW2d 645 (2000). Possession may be either actual or constructive, and may be proved by circumstantial evidence. In order to establish constructive possession of a firearm, defendant must be aware of the location of the firearm and it must be reasonably accessible to him. *Id.* at 437.

Although defendant denied knowledge of the firearm during trial, during interrogation on the day of his arrest, defendant stated that the firearm was for store security and described it as a musket.<sup>1</sup> Viewing the evidence in conjunction with defendant's statements during the interrogation, it is reasonable that a trier of fact would determine defendant was aware of the firearm. Therefore, the first element of constructive possession was met.

The second element of constructive possession was met because the firearm was reasonably accessible to defendant at the time of his arrest. The firearm was found approximately two to three feet from where defendant was standing at the store counter. As a result, defendant would have been able to quickly access the firearm. Thus, there is sufficient evidence for a reasonable trier of fact to determine that the firearm was reasonably accessible to defendant at the time of his arrest.

Defendant's testimony that he was unaware of the firearm and that he did not make the statements credited to him during interrogation conflicted with that of the police officers that made the arrest. Hence, the trier of fact made a credibility determination. This Court will not interfere with the trier of fact's "role of determining the weight of evidence or deciding the credibility of witnesses." *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004). Furthermore, the credibility determination by the trier of fact is strengthened by defendant's admission to signing the interrogation sheet and initialing his response to each question. Therefore, we conclude that sufficient evidence was presented to establish that defendant had constructive possession of the firearm at the time of his arrest.

Defendant was convicted of possession with the intent to deliver marijuana, which is a felony. When police entered the crime scene, the marijuana and the firearm were both within close proximity to defendant. Defendant possessed the firearm and the marijuana concurrently, thus meeting the standard that defendant possess a firearm while committing a felony.

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<sup>1</sup> Although the firearm was a Ruger twenty-two-caliber carbine rifle and not a musket, the statement shows that defendant was aware that it was a long gun.

Consequently, there is sufficient evidence to uphold all elements of defendant's felony-firearm conviction.

Affirmed.

/s/ Michael J. Talbot

/s/ Helene N. White

/s/ Kurtis T. Wilder